

BEFORE THE THREE MEMBER HEARING PANEL CONVENED
PURSUANT TO RSMO SECTION 162.961

,)	
)	
)	Petitioner,
vs.)	
)	
ST. LOUIS CITY SCHOOL DISTRICT,)	
)	
)	Respondents.

DECISION AND ORDER

This matter comes before the panel on the hearing date of July 22, 2003. Pending before the panel was the school district's Motion to Dismiss on the grounds that (1) the mother of the Petitioner, , was not the legal guardian of the Petitioner; (2) if the mother of the Petitioner were the legal guardian, the residency of the mother was in St. Louis County, Missouri; and (3) if the above were satisfied, the request for the due process was not specific enough under the rules to support a finding by the panel.

The panel was satisfied that the District had attempted to resolve those issues, but the Petitioner's mother did not cooperate.

Present at the hearing to consider those issues were St. Louis Public School District and its legal counsel, and the grandmother and great grandmother of the Petitioner. Petitioner's mother did not appear at the hearing.

The parent filed for a due process hearing alleging that the student had a certain disability resulting in the need for special education. The District requested an extension and the parties agreed to a hearing date of July 22, 2003, at 1:30 p.m. This order is entered into within that time line.

The District submitted with its Motion for Dismissal, protective custody orders entered into by the St. Louis City Circuit Court Juvenile Division dated April 23 and May 27, 2003, respectively. The effect of those orders was to transfer protective and legal custody to the Division of Family Services with physical custody in the grandmother, Tina Thomas.

The panel inquired whether or not there had been any change in those orders and received a response from both the grandmother and the District that those orders were still in full force and effect.

The physical custodian grandmother indicated to the panel that she was satisfied with the present educational status of the Petitioner.

In Section 211.021 Mo. Rev. Stat. (2000) of the Juvenile Courts Chapter, the term “Legal Custody” has been defined as follows:

... the right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline of a child. Legal custody may be taken from a parent only by court action and if the legal custody is taken from a parent without termination of the parental rights, the parent’s duty to provide support continues even though the person having legal custody may provide the necessities of daily living.

The City of St. Louis Family Court has taken action to remove Parent as legal custodian and place custody of the Petitioner Student with DFS. More specifically, the Court has given the DFS the right to make decisions concerning the education of Petitioner. Thus, Parent has no standing to request a due process hearing. The District has shown that Parent does not have physical and legal custody of Petitioner and therefore has no standing to request a due process hearing. The Motion to Dismiss filed by the District is granted without prejudice. In the event the City of St. Louis Family Court returns custody of the Petitioner to the Parent, then she has the right to file a request for a due process hearing.

This Order constitutes the final decision of the Department of Elementary and Secondary Education in this matter. Any party aggrieved by this Order may, pursuant to Section 536 of the Missouri Revised Statutes, file an appeal to a state court within 30 days of the date of this Order.

An aggrieved party also has the option of pursuing a review of the Order by the federal courts by filing a petition within 30 days.

Dated: July 24, 2003

Robert P. Baine, Jr., Chairperson

cc: Ms. Pam Walls
Ms. Sue Dame
Ms. Margaret Mooney
Ms. Pamela Wright
Ms. Pam Williams